who, however, said that from the restaurant, shortly after he had met with the accused in the company of the two Chinese and the Indian, and at the request of the accused, he and the accused left for Ulu Pudu to look for one Bala but to no avail.

Sentul's evidence was clear and unambiguous and supported the prosecution's story that the accused had a meeting with PW3 and the two Chinese not only on the afternoon of 25 January but also on the night of 24 January 1985. Though Sentul did not relate what passed in conversation between the accused and PW3 on both the occasions nevertheless it is clear that his evidence in respect of the episode on 25 January 1985 – that the accused, after a conversation with the two Chinese and the Indian, left the scene after which PW3 followed the accused – strengthens the prosecution's case that the accused left to fetch the bag of cannabis after striking a bargain with PW3.

As regards the meeting on the night of 24 January 1985 when Sentul met with the accused he saw him in the company of two Chinese and an Indian. It was only after that that they went to Ulu Pudu. To my mind the accused shifted the time frame of his visit to Ulu Pudu. He did visit Ulu Pudu but only after he had met with PW3 and the two Chinese.

One other matter. The accused complained that ASP Zakaria, PW3 and one other policeman assaulted him with a cane at Cheras Police Station and asked him to admit that the bag belonged to him. He said that they also asked him 'about some drugs'. He also said that four others were assaulted at Cheras Police Station. Kundoo, Sentul and Kanagaraj also complained of assaults at the Cheras Police Station though they did not specifically mention who assaulted them. The accused made another complaint about being assaulted at the police headquarters by Zakaria and PW3. ASP Zakaria and PW3 denied the allegations. The DPP did not cross-examine the accused and Kundoo on the allegations they made but, notwithstanding that, I have no reason to disbelieve ASP Zakaria and PW3 when they denied assaulting the accused or the three or four others. Even if the accused or the others were assaulted by other police personnel I cannot see how that detracts from the compelling evidence that before his arrest the accused had agreed to sell to PW3 the cannabis and that he was caught with a bag of cannabis which he was supposed to deliver to PW3.

The elaborate story of the accused going to buy 'banana leaf' food for Deepa on Kanna's motorcycle, he making a coincidental appearance by the lane for Sentul to call out to him, he being asked by Sentul to fetch a bag and he readily agreeing to do so, and his other story that on the night previous to the day of the arrest he did not meet with PW3 to sell drugs to him but had instead at the time in question, accompanied Sentul to Ulu Pudu, fly in the face of the evidence of PW3 and of Sentul that on both occasions the accused had met two Chinese men and an Indian man. The evidence of PW3 was that the accused had on 24 January 1985 agreed to sell him 1,000 rolls of cannabis at $2 each, but that the deal was suddenly called off by the accused; and that on 25 January in the afternoon the accused agreed to sell him about 700 rolls of cannabis and that he went to fetch the cannabis and that he was arrested after he had come down the stairs with a bag containing 680 rolls of cannabis. To my mind the evidence of Sentul was clear and unambiguous as was the evidence of PW3, and the defence has not created any reasonable doubt on the prosecution's case that the accused agreed to sell cannabis to PW3 and that he was carrying the cannabis for delivery to the latter when he was arrested, acts which constitute trafficking in a dangerous drug, an offence under s 39B(1)(a) of the Dangerous Drugs Act 1952.

The accused is therefore guilty of the offence for which he is charged. And I convict him.

Order accordingly.

Solicitors: *Puvan & Co.*

Reported by *Wong Kim Fatt*

Public Prosecutor v Chin Hock Aun

HIGH COURT (KUALA LUMPUR) – FEDERAL TERRITORY
CRIMINAL TRIAL NO 58-17-1986
KC VOHRAH J
13 OCTOBER 1988

Criminal Law – Dangerous drugs – 78.01 gm of heroin – Trafficking in – Drugs found on the person of accused – Police raided hotel room – Defence of being a victim of a frame-up – Whether any obligation on the police to give search list – Whether defence story raises a reasonable doubt – Dangerous Drugs Act 1952, s 39B(1)(a)

The accused was charged as follows:

'That you on 17 September 1985 at about 7.20 pm at Jalan Raja Bot, in the Federal Territory of Kuala Lumpur, did traffic in dangerous drugs, to wit, heroin weighing a total of 78.01 gm and you have thereby committed an offence under s 39B(1)(a) of the Dangerous Drugs Act 1952 (Revised 1980) and punishable under s 39B(2) of the same Act.'

Seven police personnel from the Klang police station went to Kuala Lumpur on the evening of 17 September 1985 in an operation at the 'Chow Kit' area. The accused was arrested at Jalan Raja Bot at about 7.20 pm that day by two of the police personnel, detective constables Shee and Chua. These two constables had kept watch on the accused from the time he came out of the market at about 7.05 pm at Jalan Raja Bot earlier that night. They saw him walk to a car parked along Lorong Hj Hussin Tiga and talk to someone inside it. They saw him then

walk to and go inside South-East Asia Hotel which was nearby. They saw him then come out of the hotel and retrace his steps; he walked back to the market. They arrested him when he again came out from the market. The accused shouted out and put up a struggle. He was eventually handcuffed and was found to have something tucked at his waist in the area of his stomach. The police personnel brought the accused, the car and the five occupants of the car to the Dang Wangi police station. In a room in the station the accused was searched and a package was found tucked at the accused's waist between the waistband of his trousers and his tucked-in shirt. The package contained a plastic bag of a granular substance which on analysis by a government chemist showed that it contained 78.01 gm of heroin. Later the police party went to the South-East Asia Hotel with the accused and conducted a search and recovered a briefcase from a room which was registered in the accused's name. The briefcase or bag contained 115 empty plastic packets, two blades, a package containing three candles, a spectacle case and a piece of yellow cloth. The accused elected to give his evidence on oath. His story was that he was a victim of a frame-up by one Sei Chye Ming. He admitted that the police discovered a package on his person after he was arrested. But he denied that he knew it contained heroin; that package was supposed to have held money for one Michael. Defence counsel contended that there should have been a search list given to the accused.

Held, convicting the accused:

(1) There is no requirement under the provisions of the Dangerous Drugs Act 1952 to provide a search list. There is no provision in the Criminal Procedure Code for the sort of seizure done in this case. In this case the seizure was made without a search warrant under the provisions of the Dangerous Drugs Act 1952. The general provisions for seizure with or without search warrants are contained in s 27 of the Act and there is nothing in s 27 or any other section requiring that a search list be made of goods seized after a search save for s 30(3). Section 30(3) states that when any conveyance is seized under s 30, the seizing officer shall forthwith give notice in writing of such seizure and the grounds thereof to the owner of such conveyance but even then no such notice is required to be given where the seizure is made in the presence of the offender or the owner or his agents. Thus there is no legal obligation on the part of the raiding party in this case to prepare and deliver a search list under the terms of ss 64 and 65 of the Criminal Procedure Code.

(2) On the balance of probabilities, the court found that the accused knew the nature of the drug to be heroin and that he was trafficking in it.

[*Editorial Note*: The accused has appealed to the Supreme Court vide Criminal Appeal No 80 of 1988.]

Case referred to

1 *San Soon Ha* v *PP* [1968] 1 MLJ 34 (refd)

Legislation referred to

Criminal Procedure Code (FMS CAp 6) ss 51, 52, 54, 56, 58, 62, 62A, 62B, 63, 64, 65
Dangerous Drugs Act 1952 (Revised 1980) ss 39B(1)(a), 39B(2)
Evidence Act 1950 ss 35
Registration of Guests Act 1965 ss 2, 3(1)(a), 3(1)(b), 27, 30, 30(3)
Criminal Procedure Code [Ind] s 103(2), (3)

Zaini bin Abdul Rahman (Deputy Public Prosecutor) for the Public Prosecutor.

Manjeet Singh Dhillon for the accused.

Cur Adv Vult

KC Vohrah J: The accused was charged as follows:

> That you on 17 September 1985 at about 7.20 pm at Jalan Raja Bot, in the Federal Territory of Kuala Lumpur, did traffic in dangerous drugs, to wit, heroin weighing a total of 78.01 gm and you have thereby committed an offence under s 39B(1)(a) of the Dangerous Drugs Act 1952 (Revised 1980) and punishable under s 39B(2) of the same Act.

Seven police personnel from the Klang police station came to Kuala Lumpur on the evening of 17 September 1985. They came for an operation at the 'Chow Kit' area. Jalan Raja Bot, Lorong Haji Hussin Tiga and South-East Asia Hotel are in the 'Chow Kit' area.

The accused was arrested at Jalan Raja Bot at about 7.20 pm that day by two of the police personnel, Detective Constables Shee and Chua. These two constables had kept watch on the accused from the time he came out of the market at about 7.05 pm at Jalan Raja Bot earlier that night. They saw him walk to a car parked along Lorong Haji Hussin Tiga and talk to someone inside it. They saw him then walk to and go inside South-East Asia Hotel which was nearby. They saw him then, later, come out of the hotel and retrace his steps; he walked back to the market. They arrested him when he again came out from the market. The accused shouted out and put up a struggle. He was eventually handcuffed and was found to have something tucked at his waist in the area of his stomach.

Two police officers, ASP Kassim and ASP Mohd Zai, who rushed to the area of the arrest on hearing shouts were told to detain a car by Lorong Haji Hussin Tiga and assisted by DPC Chua, the car and its five occupants were detained. The accused had, before his arrest, been seen by constables Shee and Chua talking to someone inside this car.

The police personnel brought the accused, the car and the five occupants of the car to the Dang Wangi police station. In a room in the station the accused was searched by ASP Kassim in the presence of constable Shee and a package was found tucked at the accused's waist between the waistband of his trousers and his tucked-in shirt. The package contained a plastic bag of a granular substance which on analysis by a government chemist showed that it contained 78.01 gm of heroin.

At the Dang Wangi police station the car that was seized was searched by ASP Zai and cash and two cheques were recovered.

Later that night ASP Mohd Zai went to the South-East Asia Hotel with a police party and the accused, and recovered a briefcase from a room which was registered

in the accused's name. ASP Mohd Zai then returned to Dang Wangi police station and later all the seven police personnel returned to Klang bringing with them the accused, the car and its five occupants and the exhibits seized from the accused, the car and the hotel.

I now come to the evidence adduced by the prosecution.

In regard to the evidence relating to the observation kept on the accused and to his arrest, constable Shee (PW2) stated that at about 7 pm he and constable Chua (PW4) positioned themselves at the junction of Jalan Raja Bot and Lorong Haji Hussin Tiga. After about five minutes he saw a male Chinese, the accused, coming out from the market which was across the road where he had positioned himself.

He said he saw the accused 'acting in a suspicous manner' and that 'his eyes were roving, looking all over the place'. He saw him go towards Lorong Haji Hussin Tiga and talk to someone sitting inside a Honda Accord car which was parked along this lane. After that the accused walked away and he (Shee) and Chua followed him and saw him enter the front door of South-East Asia Hotel.

Shee said that he and Chua waited for about ten minutes at the five-foot path opposite the hotel before he saw the accused come out from the hotel and retrace the earlier route and go back to the market. He and Chua followed him and waited near the market. After ten minutes of waiting, he saw the accused come out from the market and he and Chua then approached the man.

Shee said he and Chua arrested the accused on Jalan Raja Bot and at the same time identified themselves as police officers. He said that while they were arresting him the accused struggled and then the accused shouted in Cantonese, 'Ta chong! Ta chong!' ('Robber! Robber!')

Shee stated that when the accused shouted that out he (Shee) again introduced himself as a police officer but the man kept on struggling. Then ASP Kassim (PW7) and ASP Mohd Zai (PW8) came forward to give assistance and Chua then managed to handcuff the accused's hands behind his back.

Shee stated that after that he told ASP Kassim to detain a white Honda Accord car which was in Lorong Haji Hussin Tiga. ASP Kassim, ASP Mohd Zai and PC Chua then went to the car. Shee then made a body search of the accused and found a package tucked in between the trousers waistband and the tucked-in shirt. He did not take possession of the package but instead immediately took the accused to where ASP Kassim was and informed him that 'something was stuck on the body of the accused'. He said that ASP Kassim then searched the person but did not take the package.

DPC Chua (PW5) substantially corroborated the evidence of Shee regarding the observation kept on the accused from the time the accused first came out of the market up to the time he was seen to go to the car, to the hotel and then return to the same market; and then come out of it five minutes later. Chua said that when he first saw the accused come out of the market, the accused was 'acting suspiciously, looking left and right'. When he saw the accused come out of the market the second time, he saw the stomach area of the accused to be bulging.

Chua said that on seeing the accused approaching him and Shee, he and Shee immediately identified themselves as police officers and caught hold of him. He said the accused put up a struggle and shouted, 'Samun! Samun!' in Bahasa Malaysia ('Robber! Robber!'). Chua then stated again he was the police and by that time ASP Kassim and ASP Zai had run there to assist them. Chua said that he straightaway handcuffed the accused with his hands to his back and then he ran with ASP Kassim and ASP Zai towards the Honda Accord car as he had earlier seen the accused talk to one of the passengers of the car.

DSP (then ASP) Kassim and ASP Mohd Zai corroborated substantially the evidence of Shee and Chua that they ran up to the place of arrest. They both said that while they were at an eating shop they heard shouts and ran towards the area of the shouts and saw Shee and Chua struggling with the accused. They were told to detain a car at Lorong Haji Hussin Tiga and they ran towards the car with Chua.

I next turn to evidence relating to the second phase of events. This relates to the seizure of the car, the detention of the five occupants of the car and the cursory search of the accused near the car and the subsequent search at the Dang Wangi police station.

DSP Kassim stated that while constable Shee stayed with the accused, he, ASP Zai and constable Chua ran to the Honda Accord car. A shot was fired (and Chua confirmed he shot at but missed the tyre of the car), the car was detained and the occupants of the car were instructed to get out. Then Shee brought the accused to the place and informed him that 'there was a package in the trousers of the male Chinese'. He said he touched the area of the waistband where Shee told him there was a package. He felt the package but told Shee not to remove it as there were a lot of people in the area and for the safety of the police personnel. He instructed all police personnel to proceed to Dang Wangi police station. Chua and ASP Zai substantially corroborated the evidence of Kassim. They also said there were five occupants in the Honda Accord car.

DSP Kassim said that on arrival at Dang Wangi police station he and Shee took the accused to a room in the police station and he searched the accused's person

and removed a package tucked in at the waistband of the trousers. It was an envelope (P5) and inside the envelope was a plastic packet (P6) which contained a granular substance. He also found on the accused's person, inter alia, a wallet (P11), the accused's identity card (P10) and driving licence (P12), a watch (P8) and a lighter (P9), four business cards (P13A to D), a piece of paper with numbers written on it (P14) and $262 cash (P17).

After that he instructed ASP Zai to take the accused to South-East Asia Hotel to conduct a search.

Constable Shee confirmed that DSP Kassim searched the accused in a room in the police station and found an envelope in between the accused's shirt and the trousers' band. He said that inside the envelope was a plastic bag which contained a reddish substance. He confirmed the recovery of the other items mentioned by DSP Kassim as recovered from the accused and stated that also recovered from the accused's person were two keys (P15) and two pieces of yellow cloth (P16).

We come now to the third phase of events involving the search of the Honda Accord car that was seized, the search of a room at South-East Asia Hotel which was registered in the name of the accused and the recovery of a bag with its contents in the room.

While at the Dang Wangi police station ASP Zai conducted a search of the Honda Accord car seized at Lorong Haji Hussin Tiga and recovered in the glove compartment of the car a bundle containing $2,976 cash. He also recovered two cheques. Constable Chua substantially corroborated the evidence of ASP Zai on the search and the recovery of the cash and the cheques.

We now move to the evidence relating to the search of a room at Hotel South-East Asia. It will be remembered that constables Shee and Chua saw the accused go to this hotel. ASP Zai on the instruction of ASP Kassim brought the accused from Dang Wangi police station to the South-East Asia Hotel. He said he went there with Inspector Ibrahim, Detective Corporal Ahmad Abas and constable Roslan (PW10). He went to the reception counter and took the key to room 1615 which he found was registered in the name of the accused.

He said he recovered a bag (D22) from a cupboard in this room. The bag contained 115 empty plastic packets, two blades, a package containing three candles, a spectacle case and a piece of yellow cloth. No other items were found in the room. Lance corporal Roslan confirmed going to the hotel with the group mentioned by ASP Zai.

Room 1615 in South-East Asia Hotel was registered in the name of 'Chin Hock Aun', the name of the accused, for 16 September 1985. This appeared as 'folio number' 74728 in the register of guests (P25) for the month of September 1985 produced by the front office manager (PW7) of South-East Asia Hotel. Such a register is required to be kept under s 3(1) of the Registration of Guests Act 1965 by the keeper (which under s 2 thereof includes the manager) of premises where lodging or sleeping accommodation is provided. The register is required to be kept, under s 3(1)(a), in the form prescribed in the First Schedule and under s 3(1)(b) of the Act certain particulars relating to, inter alia, the date and time of arrival of the guest of the hotel, the name of the guest, and his identity card or passport, the room assigned to the guest are required to be entered in the register. Under s 35 of the Evidence Act 1950 an entry, inter alia, in a register made by a person in performance of a duty specifically enjoined by the law of the country in which the document is kept is itself a relevant fact. Clearly therefore the entries in respect of the 'folio number' no 74728 for 16 September 1985 in the prescribed register (P25) are admissible. The relevant entries are:

Name	*Room no*	*Time*	*Address*
Chin Hock Aun	1615	1337	30, Jalan Haji Hussin, Kuala Lumpur

There was no entry showing the date or time of departure of Chin Hock Aun. It seems clear that room 1615 which the police had searched had been allotted to the accused on 16 September 1985 and he had not vacated it on 17 September 1985.

The prosecution evidence was that after the search of the hotel room ASP Zai and his men brought the accused back to Dang Wangi police station. Subsequently the seven-member police party returned to Klang in the police van and the seized Honda Accord car bringing along with them the accused, the five occupants of the car and all other exhibits. Lance corporal Roslan (PW10), however, rode back on a motorcycle which he said belonged to his informer. His evidence was that he picked up the motorcycle on his way back to Klang that night.

I now come to the matter of the heroin that was seized.

The plastic bag (P6) of granular substance seized from the accused was sent by the investigating officer of the case, PW9, to government chemist Phua Hiang (PW6) for analysis. PW6 in his evidence stated that the net weight of the substance in the bag was 376.53 gm and on analysis was found to contain 78.01 gm of heroin.

That the plastic bag of heroin was found on the accused's person was not disputed by the defence. The cross-examination of witnesses was directed to show that the accused had no knowledge that the package he carried contained heroin. The allegations were that the accused was arrested by Shee and Chua on a pre-arranged

signal from an informer been given; that the key to the hotel room allegedly booked in the accused's name was found in the Honda Accord car; that the accused pointed out the informer's motorcycle which constable Roslan then rode to Klang that night and that Roslan did not meet the informer at the scene. These allegations were all denied. Suffice it to say these allegations would have to be examined when the defence is considered; thus the evidence adduced at the close of the case for the prosecution, not inherently incredible, showed the accused had possession of the package of drugs and that he is presumed to have known the nature of the heroin contained therein and he is presumed to have trafficked in it.

I called upon him to make his defence.

Defence

The accused elected to give his evidence on oath. His story was that he was a victim of a frame-up by one Sei Chye Ming. He admitted that the police discovered a package on his person after he was arrested. But he denied that he knew it contained heroin; that package was supposed to have held money for one Michael. He had collected the package from Sei Chye Ming for Michael who, because he was drunk, had asked the accused to collect what money Sei Chye Ming owed Michael. He said Michael was one of the five persons in the car which was detained that night by the police. The accused's story was that after Sei Chye Ming inserted the package into the waistband of the accused's trousers, Sei Chye Ming lit a cigarette lighter and on that signal being given the police arrested him.

His story was that he lived in Telok Anson after having worked in Singapore. Before working in Singapore he had worked as fruit seller in the Chow Kit area in Kuala Lumpur. On 9 September 1985 he returned to Telok Anson from a one-day visit to Singapore after a fruitless effort to look for a job there. On 16 September 1985 he came down to Kuala Lumpur to the Chow Kit area at about 12 noon to look for a job.

He then met Michael and Sei Chye Ming at a coffeeshop; he had known Michael and Michael was 'an illegal moneylender' in the Chow Kit area.

He asked to stay with Michael for one or two nights as Michael intended to stay in a hotel and Michael agreed.

At first he said he went to South-East Asia Hotel with Michael and Sei Chye Ming. He later said that Michael requested him and Sei Chye Ming 'to go to the hotel first as he told me he wanted to go and look for something'. Michael told them to check in first and to wait for him downstairs.

It will be remembered that the prosecution's evidence was that hotel room 1615 was registered in the name of the accused for 16 September 1985. The accused in his evidence stated that Michael requested Sei Chye Ming to register his (Sei Chye Ming's) name but since Sei Chye Ming had not brought his NRIC that day Sei Chye Ming asked for the accused's NRIC for the purpose of registration.

The accused stated that he brought a soft bag for his clothes up with him to the room and he had two keys (P15) with him for the bag. He said that Sei Chye Ming brought a briefcase which Michael had handed over to him.

The accused related what took place on 16 September 1985; he said that the three of them slept in the hotel but that night there was fight between Michael and Sei Chye Ming over what Sei Chye Ming owed Michael.

The next morning Sei Chye Ming left first and before he left Michael asked him 'where the money was and Sei Chye Ming told Michael to take the money at the market at 6.30 pm on 17 September the same day'.

The accused himself left the room at about 11 pm after Michael had told him he would rent the room for another day. Michael was then still in the room with the room key. Michael told the accused to meet him at Pertama Nightclub at 4 pm that day.

The accused met Michael at the said club at the said time with 'Koh Wah', 'Ah Ming', 'Ah Piew' and 'Fei Chow' (all five of whom were detained by the police in the Honda Accord car that night) and they all drank liquor up to 6 or 7 pm. After Michael suggested having something to eat they left in the Honda Accord which was subsequently detained by the police.

The accused carefully explained how the six of them were seated in the car. Kok Wah was driving. Ah Ming sat in the front passenger seat. As for the remaining four persons in the rear, the accused sat nearest to the left door; next to him was Michael, then 'Fei Chow' (Nadarajah) and nearest to the right door was Ah Piew.

The accused said that soon after all had gone into the car Michael requested Kok Wah to drive to the Chow Kit area because 'he wanted to collect the money'.

When the car stopped, according to the accused, Michael requested the accused to go and look for Sei Chye Ming at a coffeeshop in the Chow Kit Road market.

The accused gave the reason why Michael asked him to do that. He said it was because 'Michael was seated next to me, inner, and he had consumed a lot of liquor and he was a bit drunk'.

The accused said he then went to the market to look for Sei Chye Ming but did not find him. He agreed that when he came out from the market he was looking around as described by constable Shee. He said he did

that as he was looking for Sei Chye Ming. Then he went to the car and informed Michael that he could not find the man.

At the car Michael told him to look for the man at the restaurant in South-East Asia Hotel and he accordingly went there to look for him.

The evidence of constables Shee and Chua was that the accused then retraced his steps and went back straight to the market. The evidence of the accused, however, was that he returned to the car to inform Michael that he could not find the man whereupon Michael told him to go to the market again, towards the inner side of the market. The accused said that he then went back to the market.

The accused stated that he then saw Sei Chye Ming at the inner side of the market alighting from a big motorcycle. The accused asked him where Michael's money was. Sei Chye Ming then asked him where Michael was and the accused told him that Michael was in the car and he was drunk. According to the accused he told the man that it was Michael who had asked him to collect the money. Then Sei Chye Ming told him to lead him to the car so that he could hand the money to Michael. Both of them then walked with the accused walking two or three steps ahead of Sei Chye Ming when Sei Chye Ming called out to him and said, 'This money! Take it and give it to Michael!'

The accused said that at that moment Sei Chye Ming took out a package from his jacket. The accused told him, 'Give it to me.' Sei Chye Ming pushed away the accused's hand and told him, 'Do not take it like that. Tuck it inside your waistband.' According to the accused the man also said, 'If the money was robbed, I would be responsible.'

And according to the accused, Sei Chye Ming then tucked the package into his waistband. The accused said he also helped him do it and as he (the accused) withdrew his hand after using it to tuck in the package, suddenly both his hands were held by someone. And Sei Chye Ming ran away.

The accused stated that before Sei Chye Ming ran away he lit a cigarette with his lighter.

He said two persons in civilian clothes held on to him and thinking someone was robbing him he shouted, 'Robbery! Robbery!' in Cantonese.

The car with the five passengers was detained by the police, he was brought to Dang Wangi police station and searched and the package and his wallet were taken from him.

After that he was taken in a van to South-East Asia Hotel at the Chow Kit area by a police party which included constable Chua, and the accused then led them to the room he was staying in; one of the officers then went down and came up later with a staff of the hotel and the officer opened the door and 'rushed in with a gun'. He said the police searched the room and took away the briefcase (P22). The party then returned to the Dang Wangi police station.

The accused said he was again brought back to the Chow Kit area, this time in the car that had been seized, to the arrest scene and he pointed out the motorcycle which belonged to Sei Chye Ming. He said one of the Malay men connected some wires and started the motorcycle and rode the motorcycle to Klang when they all went to Klang police station.

The accused called two witnesses, Koh Teck Choy also known as Michael (DW2) and Nadarajah (DW3).

The evidence that Michael gave in examination-in-chief was brief. He said he was arrested in a car with four others at Chow Kit road. He said he and the accused and four others had gone to Chow Kit from Pertama Nightclub. On arrival at Chow Kit he requested the accused to collect money from Sei Chye Ming as Sei Chye Ming had told him that morning to look for him at the market area at six something. He said that the accused, Sei Chye Ming and he spent the night of 16 September 1985 at South-East Asia Hotel and he (DW2) brought a briefcase similar to P22 to the hotel. He said the briefcase contained empty plastic packets, candles and blades. He subsequently claimed P22 was his as it had a mark on the bag. On inspection the briefcase appeared to have a blob of red wax on the right side of the right clasp of the bag.

Michael was then offered for cross-examination and I shall deal with his evidence together with his evidence given during cross-examination when I consider the totality of the evidence adduced in the case.

Nadarajah (DW3) stated that he was on 17 September 1985 with Michael at the Pertama Nightclub when he was introduced to the accused by Michael and that they had 'whisky, Martell' in the club. He also met one Ah Ming and three others in the club. They left the club at 5 pm. Ah Ming asked him to go in a car and got into the car. And he asked 'them' to send him back to Jalan Ipoh. He said, 'After that we went behind and fetched Chin Hock Aun (the accused).' He did not know where they were going. At the Chow Kit area the accused got down because he heard Michael ask him to go and collect some money. He said the accused sat by the door side on the left and that Michael was between the accused and himself at the back of the car.

I shall deal with his evidence and the evidence elicited during cross-examination when I consider the totality of the evidence of the case when the defence is examined.

It will be seen that the accused admitted coming out of the market and going to a car and speaking to someone inside the car and going to South-East Asia Hotel and retracing his steps to the market. He admitted being arrested by Shee and Chua and to shouting 'robbery'. And he admitted carrying a package with him. These too were matters testified to by Shee and Chua. The accused also testified to going to the hotel for a search of the room and the evidence of ASP Zai was borne out. But in admitting all these he claimed facts which appear to throw a different light on the prosecution's case.

Needless to say in considering the defence I have to assess it in the totality of the evidence adduced. The accused's story is that Sei Chye Ming inserted a package into the waistband of his trousers and then Sei Chye Ming signalled to the police by lighting up a cigarette with his lighter and immediately after he had assisted in tucking in the package at the waistband the police arrested him; and this was at the entrance to the market. But the evidence of both constables Shee and Chua was that the accused had walked out of the market and was on Jalan Raja Bot when they arrested him. They arrested him because they saw a bulge in the stomach area of the accused.

Shee's evidence in respect of what he saw the accused do is clear: 'After we waited for about ten minutes the male Chinese came out of the market. I and Chua approached the male Chinese.' When he was asked if he was able to get near him he replied, 'Yes, I was able to get near him outside the market at Jalan Raja Bot.' He said that on getting near the accused he and Chua arrested the accused.

If, as the accused says, he was arrested near the entrance of the market after Sei Chye Ming had inserted the package at his waistband and after Sei Chye Ming had signalled to the police and the arrest was made while he was himself tucking in the package, all these must have happened within a few moments and Shee and Chua would have seen all these as indeed they would have seen Sei Chye Ming come to the market on his big motor and alight from it as alleged by the accused. There was no evidence at all on these matters by Shee and Chua and they were not cross-examined on these save that it was put to Shee, and he denied it, that a male Chinese lit a cigarette lighter to signal to him. Shee's evidence was clear as indeed was the evidence of Chua and I have no reason to disbelieve them.

I now come to this character Sei Chye Ming. And to Michael. According to the accused, Sei Chye Ming had a quarrel with Michael over some money owed by Sei Chye Ming to the latter in the hotel room 1615 the previous night in South-East Asia Hotel which the three shared. According to him he booked the room but it was Michael who was to pay for the room and Michael had agreed that he could stay the night with him and Sei Chye Ming.

The accused said Michael was a moneylender, 'an illegal moneylender'. He said that in the hotel the previous night, 'I heard that Sei Chye Ming owed Michael some moneys and they fought over that.' He said that on the day of the arrest 'before Sei Chye Ming left Michael, Michael asked him where the money was and Sei Chye Ming told Michael to take the money at the market at 6.30 pm on 17 September the same day'. It seems clear from what he said that Sei Chye Ming had borrowed money from Michael, an illegal moneylender. This was confirmed by his evidence when he said under cross-examination, 'Michael claimed that Sei Chye Ming had taken his money and did not pay him back and the whole matter was out of some moneylending business.' And according to him he was supposed to collect $6,000 to $7,000 for Michael. Michael's evidence on the other hand was that he collected money on behalf of his employers; he was a bill collector. When asked whether he had ever been a moneylender he denied it and he said Sei Chye Ming was employed by him and assisted him in collecting the moneys and to act as his bodyguard. He said he asked Sei Chye Ming to collect money 'from many people'. He said, 'Since Sei Chye Ming had been going to collect debts together with me and he also knew who the debtors were I told the debtors in future if Sei Chye Ming came to collect debts they could give it to him.' He agreed he told the debtors that they could give him moneys he collected for him. It is clear from Michael's evidence that he was not a moneylender and that the money that was allegedly from Sei Chye Ming was not money owed by Sei Chye Ming to Michael. This certainly showed that the accused was lying when he said that he had heard a quarrel between the two over what Sei Chye Ming owed to Michael in his moneylending business. My view is that no such quarrel ever took place.

Did the accused really stay the night with Michael and Sei Chye Ming in room 1615 at South-East Asia Hotel then? This is relevant as the accused has tried to show that Michael and Sei Chye Ming spent the night with him in the hotel to lend credence to the story that he thought the package he collected contained money and to distance himself from the briefcase (P22). The briefcase was discovered in the room after a police search on 17 September 1985. The bag contained 115 empty plastic packets (P22), a packet of three candles (P28), two blades (P27), a piece of yellow cloth (P29) and a spectacle case (P30). It is highly improbable that the 115 small empty plastic packets were to be used, as claimed by Michael who also claimed possession of the bag, for keeping money. Michael said he kept money in the plastic packets and used wax to seal the plastic packets. I shall deal with the matter of the wax later in relation to how he identified

the briefcase as his. Now Michael said that he used the plastic packets to 'wrap up' money and when pressed how much he kept in a plastic packet he realized, to my mind, how ridiculous it was to state he kept notes in the small plastic packets and stated, as pure invention, 'coins, about $5'. When asked why he needed to seal the packets with wax he replied, 'For calculation purposes and it is easier to count money when I hand over to my employer.' From common everyday knowledge all that is needed to seal a plastic packet is to apply heat from a source, like a lighted candle, running it below the pressed mouth of the plastic packet and the packet is sealed. If it is needed to trim uneven edges one uses a blade to cut off excess plastic above the sealed line. The point is that no wax is needed to seal the plastic packets and indeed no wax was found in the bag. In any event it is unlikely that the moneys he collected as bill collector would have been mostly in coins; the money would have been in notes and it seems to me it would have been 'easier to count' notes to hand over to his employer if rubber bands or other binders were used to designate ascertained amounts but no rubber bands or other binders were found in the bag.

Michael claimed he could identify the bag because it had a small red mark on the right side of the right clasp of the bag. This mark appears to be a tiny blob of wax and he called it 'plastic wax'. He claimed that when he was sealing the plastic bags containing the money the wax accidentally fell on the briefcase. The blob of wax on the right side of the right clasp was red in colour. The 115 plastic packets found in the bag are transparent. No wax, let alone a red sealing wax, was found in the bag. And as I have stated earlier it is not necessary to have wax to seal the plastic packets. To my mind his purpose was to help the accused by claiming the bag (P22) as his. When asked how he could recognize the bag (and he handled the bag in his hands in court) he must have seen the little blob of wax and quickly and desperately latched on to this insignificant blob of wax on the bag (which had no name tag or other distinguishing feature) to claim the bag as his.

My view is that the bag did not belong to Michael. Michael invented the story to help the accused. My view is that in all probability the bag belonged to the accused. Now the prosecution's evidence was that the accused booked the hotel room and that appears from the hotel register. The accused said it was Michael who had asked Sei Chye Ming to book the room but since that man did not have his NRIC he (the accused) booked it. Michael claimed that although he lived with his brother at 65B, Jalan Tiong Nam, 10 to 15 minutes walk from Chow Kit area, he did not have a fixed place of residence. On the other hand, Nadarajah (DW3) said Michael was his neighbour and lived at 61, Jalan Datuk Haji Yusof, Damai Complex, along Jalan Ipoh, and that he had been there to meet him. Michael claimed that since he did not have a fixed place of abode, he would rent a room and he would sometimes rent hotel rooms. I find that highly improbable as he claimed he was a bill collector and I cannot see how a bill collector could afford every now and then to rent hotel rooms let alone employ Sei Chye Ming to be his assistant and bodyguard. There could be no reason to rent in any event a room at South-East Asia Hotel in the Chow Kit area when his place of residence with his elder brother was just 10 to 15 minutes walk from Chow Kit or if Nadarajah was telling the truth, about one mile from No 61, Jalan Datuk Haji Yusof at Damai Complex. Just as Michael was trying to help the accused exculpate himself on the bag, Michael was trying to help the accused in stating that he stayed the night with the accused and Sei Chye Ming in the hotel.

The accused also claimed that ASP Zai had recovered a hotel key from the car that was searched by him. If the accused had left the hotel room with Michael in the room on the 17th morning with the key and Michael was detained in the car that evening and if the key to the hotel was recovered in the car then it lent credence to the story of the accused that Michael was with him and Sei Chye Ming at the hotel and it lent credence to his story that Michael and Sei Chye Ming quarreled over money that night, the money the accused thought he was to collect. The evidence of ASP Zai and the evidence of Chua who assisted ASP Zai was, however, clear that no key was found in the car. The acknowledgement list (P23C) in respect of exhibits seized from the car (and this list was prepared by Inspector Saliman) did not show a key. Another list (P23B) prepared by Inspector Saliman in respect of the search of the hotel, however, showed hotel key number 1656 (instead of number 1615, an obvious clerical slip) as being one of the items handed over. And ASP Zai's evidence was that he seized the key after he had taken it from one of the staff at the reception counter that night to unlock the door of room 1615 which was booked in the accused's name. Then again if indeed Michael had the key with him it seems improbable that the key was recovered from the car as alleged and not from Michael's person. To my mind no reasonable doubt has been created on the prosecution's evidence that the key was recovered at the hotel by ASP Zai. The accused's long-winded story of ASP Zai forgetting to bring the hotel key recovered from the car and his getting the staff to bring it up and his going into the room with a drawn pistol is to my mind a cock and bull story.

Defence counsel argued that a search list should have been given to the accused in respect of the search at the hotel. To my mind there is no legal obligation on the police under the provisions of the Dangerous Drugs Act 1952 so to give a search list and that is a matter I shall deal with shortly, but even if I am wrong on that I am satisfied that no doubt has been cast on the bona fides of the police party conducting the raid at the hotel room and

the prosecution story that the key was recovered at the hotel.

If, as Michael claimed, he brought the briefcase to the hotel room and left it there and, as the accused claimed, he brought a bag of clothings which he left there, why was it that only the briefcase was found by ASP Zai who searched the hotel room? The accused himself was not definite about the bag he brought to the room. True he had two small keys on his person when arrested but these could be for other locks not necessarily for locks attached to a soft bag and in any event no soft bag was found in the hotel room. He himself was not sure of the bag he allegedly had; he sometimes called the bag a soft bag, sometimes a briefcase. When Inspector Saliman (PW9) received the exhibits relating to the search of the hotel room he prepared an acknowledgement list in respect of the items surrendered to him by ASP Kassim and this list (P23B) showed that a briefcase and six other items were surrendered to him, and this did not include another bag. To my mind it is highly improbable that the police would not have taken the bag if it was in the hotel room. My view is that there was no other bag in the room.

Defence counsel said that there should have been a search list given to the accused. I do not think there is any requirement under the provisions of the Dangerous Drugs Act 1952 to provide a search list.

Section 65 of the Criminal Procedure Code reads:

> The occupant of the place searched, or some person on his behalf, shall in every instance be permitted to attend during the search, and a copy of the list prepared and signed *under this section* shall be delivered to such occupant or person at his request.

The requirement for the search list to be signed does not appear under s 65 itself but appears under preceding s 64 and I believe ss 64 and 65 were adapted from sub-s (2) and (3) of s 103 of the Indian Criminal Procedure Code and in the process a drafting error crept into our s 65; the words 'under this section' should really read 'under section 64'.

Now, s 64 requires a list of all things seized under 'this Chapter' (ie Cap VI of the Criminal Procedure Code) and of the places in which they are respectively found to be prepared by the officer or other person making the search and signed by him.

It will be noted that the search list is in respect of things seized under Cap VI of the Criminal Procedure Code. Chapter VI deals, inter alia, with the procedure in regard to the production of documents or other things for the purposes of any investigation, inquiry, trial or other proceeding (s 51), in regard to the production of postal articles (s 52), in regard to search warrants (s 54), in regard to warrants authorizing search for evidence of offences (s 56), in regard to search for persons wrongfully confined (s 58), in regard to search without warrant for stolen property (s 62), in regard to search warrant for counterfeit coins or currency and things connected therewith (s 62A and 62B), and in regard to summary search for stolen property under the written authority of the chief police officer (s 63).

There is no provision in Cap VI for the sort of seizure done in this case. In this case the seizure was made without a search warrant under the provisions of the Dangerous Drugs Act 1952. The general provisions for seizure with or without search warrants are contained in s 27 of the Act and there is nothing in s 27 or any other section requiring that a search list be made of goods seized after a search save for s 30(3). Section 30(3) states that when any conveyance is seized under s 30, the seizing officer shall forthwith give notice in writing of such seizure and the grounds thereof to the owner of such conveyance but even then no such notice is required to be given where the seizure is made in the presence of the offender or the owner or his agents. Thus to my mind there is no legal obligation on the part of the raiding party in this case to prepare and deliver a search list under the terms of ss 64 and 65 of the Criminal Procedure Code.

Even if I am wrong on the non-applicability of the said ss 64 and 65 to the present case, I am mindful of the case of *San Soon Ha* v *PP*[1] and I am satisfied that no doubt has been cast on the bona fides of the police party conducting the raid at the hotel room. And no reasonable doubt has been created in my mind that, as the prosecution's case shows, there was no other bag apart from the briefcase seized in the room.

It was argued by defence counsel that one Faridah should have been called by the prosecution to give evidence. PW7, the front office manager of South-East Asia Hotel, stated that Faridah had made the entry in respect of the booking by the accused of the room. PW7 said she left the hotel in 1986. Defence counsel said she should have been called as she could give evidence as to who really rented the room and whether it was for a single or double room. To my mind the evidence from the register was that the accused had his particulars registered for a room. There were no other guests registered for that room and s 3(1)(a) of the Registration of Guests Act 1965 requires all guests to be registered. In any event either PW7 or ASP Zai could have been examined if room 1615 was a single or double room. It was not necessary to call Faridah to give evidence. Even if the room could have accommodated more than one guest the question to ask is did Michael and one other person spend the night with the accused on 16 September 1985 in room 1615?

It seems to me on the basis of all that I have stated earlier, especially in respect of the briefcase, the alleged

presence of a soft bag of clothes in the hotel room, the alleged quarrel over money, the key to the hotel room, that it is clear there is no truth in the claim by the accused that he stayed the night with Michael and Sei Chye Ming in the South-East Asia Hotel room and that it was in the hotel room that he heard Sei Chye Ming and Michael quarrel over money which Sei Chye Ming owed the other over a moneylending business and that the next morning Sei Chye Ming promised to pay the money at 6.30 pm that day. Michael had tried to help corroborate the accused's story on this but as was pointed out earlier his various claims cannot hold water.

As for the briefcase, as I have stated, my view is that the briefcase belonged to the accused. It contained among other things, as was stated earlier, 115 small plastic packets and three candles and two blades. It seems highly probable that the small packets were meant to contain dangerous drugs for sale to drug addicts. The candles were to be used for sealing the plastic packets. It will be recalled that the accused had on his person a lighter which could be used to light the candles to provide a source of heat to seal the packets. The blades to my mind were for trimming excess plastic after the packets were sealed. These three items are the usual paraphernalia for those who pack drugs in small plastic packets for sale to drug addicts. While no expert witness was called to testify on the use of the items mentioned, my view is that with a judge's experience in dealing with drug cases the inference I made is a commonsensical inference. However, even if I am wrong in drawing such an inference my view is that even if I do not draw such an inference that does not detract from my finding that Michael did not own these items and that he and Sei Chye Ming did not spend the night with the accused at the hotel room on 16 September 1985.

I now come to the evidence relating to the meeting of the accused, Michael and four others at Pertama Complex. The effect of the evidence was to show that Michael after drinks in the club directed the driver to Chow Kit for the purpose of collecting the money; that he was drunk and therefore not able to collect the money himself from Sei Chye Ming; therefore he requested the accused to do so.

The accused said Michael told him to meet him at Pertama Complex Nightclub 'for drinks and dancing'. Michael too said it was a pre-arranged meeting. On the other hand, Nadarajah who was one of the five persons detained in the Honda Accord car said he met Michael in front of his (Nadarajah's home) and 'asked him if he want to drink or no (sic)'. According to Nadarajah, 'So he said he want to drink (sic). So I went with Michael together.' If what Nadarajah had said is correct it was he who invited Michael for a drink. In fact he said he footed the bill for the drinks he and Michael had. What then of the claim by the accused and Michael that the meeting at Pertama was pre-arranged between themselves? To my mind the story of the pre-arranged meeting was invented to explain how the accused and Michael and the others got together and why the Honda Accord car was found at the Chow Kit area and why the accused was seen to speak to someone in the car and to show that Michael was drunk when he arrived to collect the money. The accused and Michael stated that Michael footed the bill for the drinks they consumed and Michael, the bill collector who claimed he was paying for the hotel room, also claimed he footed the bill for the liquor consumed at the club by all his friends, ie the accused, Nadarajah and the the others who were in the Honda Accord car. But Nadarajah said he footed the bill for the drinks that he and Michael had; he said it was whisky 'Martell' and that the four others footed the bill for their own drinks and that Michael did not pay a cent. I have grave doubts that the accused, Michael, Nadarajah and the others found in the Honda Accord ever went to Pertama Complex let alone consume liquor at Pertama Complex.

The accused said that after they left the club in the car, Michael told the driver of the car, Kok Wah, to go to the Chow Kit area to collect the money. Michael stated substantially the same thing. Nadarajah's evidence was that when they left the club he and Michael were together, the accused left by himself, and the other three were together. Now he said that he and Michael were waiting for a taxi to go home to Jalan Ipoh. Then the car came by and he and Michael entered the car and as they turned back they saw the accused and offered him a lift. Now, if as Nadarajah had said, he and Michael were waiting for a taxi to go to Jalan Ipoh, Michael could not been waiting to collect the money from Sei Chye Ming because the place for collection was at the Chow Kit area not Jalan Ipoh. Then when they got into the Honda Accord, according to Nadarajah, it was the accused who said he wanted to go to Chow Kit. Nadarajah was asked by the DPP, 'Did Michael at any time direct the car to Chow Kit?' His reply was, 'Didn't hear very well in talking (sic).' He was asked point blank 'Don't know if Michael directed car to Chow Kit?' and he replied, 'Yes.'

Having considered the evidence my view is that the elaborate story of the pre-arranged meeting between Michael and the accused, the pre-arranged meeting between Michael and Sei Chye Ming to collect money, the driving of the car to Chow Kit road at the request of Michael for him to collect money from Sei Chye Ming, the inability of Michael to collect the money because he was inebriate and could not get out as the accused and Nadarajah sandwiched him, the accused at the first instance not being able to find Sei Chye Ming, and his speaking to Michael in the car the second time after a fruitless visit to the restaurant of South-East Asia Hotel, is sheer invention.

Not a single member of the raiding party was asked if Michael or for that matter any one in the Honda Accord was inebriate or smelt of liquor at the time the Honda Accord was seized and the occupants detained. To my mind the story of Michael being drunk was invented to lend credence to the story that the accused went to collect the package at Michael's request because of the condition that Michael was in.

There was evidence that an informer was at the scene. That was the evidence of Roslan (PW10). And it was sought to show that the informer could have been Sei Chye Ming. According to Lance Corporal Roslan, on the day of the incident the informer was present before the arrest of the accused was made. He said that the informer handed to him the key to his (the informer's) motorcycle as the informer was afraid to take it back. He said he rode the motorcycle back to Klang that night after Inspector Ibrahim had sent him in a van alone to pick it and that on the way to Klang he saw the seized Honda Accord going also to Klang. He said he was riding without a helmet and his explanation for not taking the helmet from the informer was that he did not think to ask for it. He denied that he jump-started the motorcycle. And he denied he never met the informer. The question arises as to whether the informer parked his motorcycle at the market. The accused said he saw Sei Chye Ming alight from his motorcycle. None of the prosecution witnesses save for Shee and Roslan remembered any motorcycle in the case and my view is that they were not feigning when they said they had no knowledge of the motorcycle. Shee merely saw the motorcycle being ridden by Roslan on the way back to Klang. The accused insisted he brought the police to the scene and that he pointed out the motorcycle and that the motorcycle was started through the use of wires. Constable Shee was questioned about going back to the Chow Kit area where it was recovered. He was, however, not questioned about its recovery at the area of the arrest. He denied going to recover it.

Defence counsel's suggestion was that since a shot was fired by PC Chua at the car after the accused was arrested, Sei Chye Ming might have bolted and left his motorcycle there. But the evidence of Shee and Chua who kept observation on the accused just before the accused's arrest did not at all show that a man had just alighted from a motorcycle or that this man had inserted something in the accused's waistband and had signalled to the police after that. The accused was arrested on the road as attested to by both constables and not, as stated by the accused, when he was still in the market area and when he was himself assisting to insert the package into his waistband. Roslan may have lied about the informer to protect his identity but my view is that this informer was not Sei Chye Ming nor was he an agent provocateur who set the trap for the accused by giving the package of drugs to him.

I now come back to the scene of the arrest of the accused. The police officers identified themselves as they arrested him. The accused struggled. And he shouted, 'Robber! Robber!' He must have shouted as a reflex action because the policemen did identify themselves. And in fact the police again identified themselves as police officers. Yet he continued to struggle. Why? It seems to me that it was because he was aware he was carrying drugs. If the package contained money the money would have been in notes. But the package contained a granular substance and the package was tucked in at his waistband and he must have felt and known the package contained drugs and not money as he claimed he thought it contained.

Having considered the totality of the evidence I am of the view Sei Chye Ming or the person portrayed as him did not exist; and that the elaborate story of Michael and Sei Chye Ming and him staying the night in the hotel, of the quarrel between Michael and Sei Chye Ming over money owed, of the pre-arranged meeting between these two where Sei Chye Ming would hand over the money to Michael, of the pre-arranged meeting of the accused and Michael at Pertama Club for drinks, of Michael being drunk and Michael requesting the accused to collect the money for him from Sei Chye Ming, is sheer invention.

On the balance of probabilities I find that the accused knew the nature of the drug to be heroin and that he was trafficking in it.

Order accordingly.

Solicitors: *Lawrence, Dhillon & Associates.*

Reported by *Wong Kim Fatt*

Tan Ooi Chee & Anor v Kanching Realty Sdn Bhd

HIGH COURT (KUALA LUMPUR) – SUIT NO F356 OF 1985
SHANKAR J
28 MARCH 1988

Civil Procedure – Judgment in default of appearance – Application to set aside granted by senior assistant registrar – Appeal – Good reason to be shown why appearance was not entered in time – Whether there exists a defence on the merits

The plaintiffs entered into an agreement with the defendant for the purchase of a piece of property. The plaintiffs instituted a claim against the defendant for statutory damages for late possession and obtained a judgment in default of appearance. The defendant applied for the judgment to be set aside and the application was allowed by the senior assistant registrar. Against this decision, the plaintiffs appealed to the High Court.